

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6638 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMDAN CHANDIDAN GADHVI

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner

MR SM MAZGAONKER for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/12/97

ORAL JUDGEMENT

#. Challenge has been made by this petition to the award of the Labour Court, Rajkot, passed in Reference (LCR) No.119 of 1980, under which the Respondent-Corporation was directed to reinstate the petitioner-workman on his original post with continuity of service and full backwages from the date of reference i.e. 1.3.80 till reinstatement, to the extent where the petitioner has

been denied the backwages from the date of his dismissal upto 1.3.80.

#. The learned counsel for the petitioner contended that the Labour Court has committed serious error of jurisdiction in denying the backwages to the petitioner for the period from the date of dismissal upto 1.3.80. It is not a case where the delay in the making of reference or completion of proceedings can be attributed to the petitioner-workman. Once the dismissal order is found to be illegal, then the consequential order would have been only of reinstatement with full backwages from the date of dismissal till reinstatement in service with all other service benefits.

#. On the other hand, the learned counsel for respondent contended that the Labour Court has, after recording the cogent reasons, denied the backwages to the petitioner for the period earlier to 1.3.80. It has next been contended that the petitioner was dismissed from services as he has committed serious misconduct but the Tribunal has not given opportunity to the Corporation to prove the misconduct only on the ground that the matter is pending since long and in case this opportunity would have been given then the Corporation could have proved the misconduct committed by the petitioner and the reference would have been answered in negative.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. In para-8 of the award, the Labour Court has held that the workman was plying Rickshaw in Ahmedabad and as such he was in gainful employment. There is delay in making of the reference and ultimately the award made in the case. This delay is also not attributable to the Corporation. The delay is made by the Government in making reference and the Labour Court or the Industrial Tribunal take long time to decide the matters also. Delay in deciding the matters are for variety of reasons and grounds but in every case it cannot be attributed to the management. It is too difficult for the management and particularly the Government Departments and the Corporations or Boards to get out sufficient material to establish that the workman was in gainful employment. However, it is difficult to believe that in all the cases the dismissed employee/ workman will not be in gainful employment elsewhere. Without employment, it is too difficult for the employee to survive and it is too difficult to accept that a workmen will be helped by his relatives or friends to the extent of his survival and

his family for the period till the matter is decided by the Labour Court or Industrial Tribunal. I find sufficient justification in the statement made by the learned counsel for respondents that even the employees are unable to meet out the expenses of their bare necessities of life with the amount of wages or salary which they draw and as such it is inconceivable to think that without any gainful employment a workman shall be in a position to survive. It is not a case where full backwages have been declined to the petitioner-workman. The backwages have been allowed though not for the whole of the period, i.e. from the date of dismissal upto reinstatement. The Labour Court has found as a fact that the petitioner was in the gainful employment. Once this fact has been found then the burden shifts on the petitioner to show and establish that for what period he was only in gainful employment. Once the evidence comes on record that the petitioner-workman was in gainful employment, i.e. plying Rickshaw, it is a relevant consideration to deny backwages to the workman concerned. Taking into consideration the facts of this case, the Labour Court has taken an objective, pragmatic and practical approach and the backwages for whole of period have not been granted. It is not a case where the award given to the extent of denial of backwages for some period, to the petitioner is perverse.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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(sunil)